IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1961.

NUMBER [redacted] 114

STATE OF GEORGIA and the PUBLIC SERVICE COMMISSION OF THE STATE OF GEORGIA,
Appellants,

vs.

UNITED STATES OF AMERICA and the INTERSTATE COMMERCE COMMISSION,
Appellees.

Appeal from the United States District Court for the Northern District of Georgia, Atlanta Division.

BRIEF OPPOSING MOTION TO AFFIRM.

EUGENE COOK,
The Attorney General,
PAUL RODGERS,
Assistant Attorney General,
Counsel for Appellants.

P. O. Address:
132 Judicial Building,
40 Capitol Square,
Atlanta 3, Georgia.

St. Louis Law Printing Co., Inc., 415 N. Eighth Street. CEntral 1-4477.

INDEX.

Page

I.

Preface 1

II.

The questions presented are substantial 2

III.

Conclusion 5

Cases Cited.

Morris v. McComb (1947), 332 U. S. 422, 92 L. ed. 44 3

Southern Railway Company v. U. S. (1911), 222 U. S. 20, 56 L. ed. 72 2

Statute Cited.

Sections 202 (b) and 216 (e) of the Interstate Commerce Act 2, 3

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1961.

NUMBER 963.

STATE OF GEORGIA and the PUBLIC SERVICE COMMISSION OF THE STATE OF GEORGIA,
Appellants,

vs.

UNITED STATES OF AMERICA and the INTERSTATE COMMERCE COMMISSION,
Appellees.

Appeal from the United States District Court for the Northern District of Georgia, Atlanta Division.

BRIEF OPPOSING MOTION TO AFFIRM.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

I.

PREFACE.

Copies of the Motion to Affirm were received by the Appellants on June 14, 1962. This Brief opposing such Motion is filed pursuant to the provisions of Paragraph 3 of Rule 16 of the Revised Rules of this Court.

II.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL.

The Jurisdictional Statement[1] anticipated and answered the contentions of the Appellees presented in their Motion to Affirm. Nevertheless, a brief response is herein made to the Motion.

The fundamental question presented by this case is whether or not the Interstate Commerce Commission's Order, requiring the racial integration of persons occupying interstate motor carriers and bus terminals, involves the direct regulation of such persons or such interstate instrumentalities. The resolution of this question is decisive of the case.

An analysis of the ICC Order reveals that the racial integration it seeks is predicated upon the intangibles of the human heart and mind and is aimed, not at inanimate interstate instrumentalities, but directly at the human subjects of interstate commerce. Such instrumentalities are not the objects of the regulation, but merely serve to define the class of persons regulated. Hence, the ICC Order is void by virtue of its direct application to subjects of intrastate commerce as prohibited by Sections 202 (b) and 216 (e) of the Interstate Commerce Act. The Appellees concede by their Motion that if this analysis is valid their defense fails.

Irrespective of the nature of the ICC Order, the Appellees contend that it directly regulates the inanimate instrumentalities of interstate commerce, and in support of this contention they attempt to analogize *Southern*[2] and

---

[1] pp. 45-52.

[2] *Southern Railway Company v. U. S.* (1911), 222 U. S. 20, 56 L. ed. 72.

McComb,[3] which upheld Federal regulation of instrumentalities of interstate commerce. These cases did not involve the direct regulation of the subjects of intrastate commerce and, therefore, are unanalogous.

If this contention of the Appellees is accepted by this Court, then by the same token, every facet of that vast amount of intrastate commerce conducted by interstate motor carriers is also susceptible to ICC regulation. Such a result was clearly unintended by the Congress as revealed by Sections 202 (b) and 216 (e) of the Interstate Commerce Act and its legislative history. The Congress, by virtue of its ample powers over interstate commerce, may require the racial integration of intrastate passengers traveling on interstate instrumentalities by enactment of self-executing legislation or by an appropriate delegation of authority to the ICC. Obviously, the delegated authority of the ICC is not coextensive with the popularity of its aspirations.

The Appellees next contend[4] that the Appellants have no grounds to complain because if the Appellants intend to enforce racial integration in intrastate transportation no conflict would exist between State and Federal regulations, or if the Appellants are seeking to preserve racial segregation, then the ICC Order invades no lawful power reserved to the states. This contention, aside from being fallacious, misses the point. The question presented concerns a definition of the authority delegated by the Congress to the ICC. The fallacy of this contention is easily demonsfrated when applied in another context. Suppose the ICC should issue an order requiring the racial integration of all the State-supported schools in the Nation. Upon objection being raised, the ICC could contend, in the same

---

[3] *Morris v. McComb* (1947), 332 U. S. 422, 92 L. ed. 44.

[4] Motion to Affirm, p. 5, fn. 2.

manner it contends here, that if the States intended to racially integrate the schools no conflict between State and Federal regulations would exist, or if the States were seeking to preserve racial segregation in the schools, then the ICC Order would invade no lawful power reserved to the States.

The Appellees, apparently in the hope of avoiding a serious consideration of the merits of this case, attempt to characterize it as merely an effort by the Appellants to preserve racial segregation in intrastate transportation. Such an effort at this late date would be futile. All of Georgia's general statutes requiring racial segregation in intrastate motor transportation have been invalidated and, clearly, Georgia is impotent to enact additional legislation of this character. However, if Georgia and her sister States are to protect the sphere of authority reserved to them by the Congress over intrastate commerce conducted by interstate motor carriers, then they cannot safely sit by and permit illegal invasions into this sphere by the ICC, with the hope that its future attempts to regulate similar objects will be refuted by the Courts. If the ICC may racially integrate passengers engaged in such intrastate commerce under the guise of regulating instrumentalities, then it may under the same guise fix the rates they pay and select the carriers that may transport them. Consequently, today's contended innocuous invasion into this sphere of State power, will form the foundation for tomorrow's total conquest of the sphere by the ICC.

In Part II of the Interstate Commerce Act, Congress has struck a balance between Federal and State power. Any alteration in such balance addresses itself to the Congress and not to the Courts. This case presents pivotal questions of nationwide importance. We must recognize that not only the interests of Georgia are involved here,

but also the interests of the other forty-nine States and the District of Columbia as well. The national pattern of motor carrier regulation produced by the Federal-State relationship is in this case placed in jeopardy. The admission of the ICC into the regulation of such intrastate commerce will herald the demise of effective and vital State regulation.

III.

CONCLUSION.

The questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution, and, hence, this Court should enter an order noting probable jurisdiction.

Respectfully submitted.

EUGENE COOK,
The Attorney General,

PAUL RODGERS,
Assistant Attorney General,
Counsel for Appellants.

P. O. Address:
132 Judicial Building,
40 Capitol Square,
Atlanta 3, Georgia.

July, 1962.

MICRO CARD

TRADE MARK ®

21

MATTHEW BENDER & COMPANY

MB

-63

microcard

PC1013